

PATENT COOPERATION TREATY

PCT

REC'D 20 FEB 2006

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference B 309 PCT | FOR FURTHER ACTION See Form PCT/IPEA/416 | |
| International application No. PCT/SE2004/001626 | International filing date (day/month/year) 10-11-2004 | Priority date (day/month/year) 11-11-2003 |
| International Patent Classification (IPC) or national classification and IPC See Supplemental Box | | |
| Applicant Bone Support AB et al | | |

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.
3. This report is also accompanied by ANNEXES, comprising:
 - a. ☐ (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:
 - ☐ sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).
 - ☐ sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.
 - b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report |
| <input type="checkbox"/> | Box No. II | Priority |
| <input checked="" type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |

| | |
|---|--|
| Date of submission of the demand 08-06-2005 | Date of completion of this report 13-02-2006 |
| Name and mailing address of the IPEA/SE Patent- och registreringsverket Box 5055 S-102 42 STOCKHOLM Facsimile No. +46 8 667 72 88 | Authorized officer Leif Brander/EK Telephone No. +46 8 782 25 00 |

Form PCT/IPEA/409 (cover sheet) (April 2005)

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Supplemental Box

In case the space in any of the preceding boxes is not sufficient.
Continuation of: Cover sheet

INTERNATIONAL PATENT CLASSIFICATION (IPC) :

A61F 2/46 (2006.01)

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Box No. I Basis of the report

1. With regard to the language, this report is based on:

- ☒ the international application in the language in which it was filed
☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of:
☐ international search (Rules 12.3(a) and 23.1(b))
☐ publication of the international application (Rule 12.4(a))
☐ international preliminary examination (Rules 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

- ☒ the international application as originally filed/furnished
☐ the description:
 pages _____ as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
☐ the claims:
 pages _____ as originally filed/furnished
 pages* _____ as amended (together with any statement) under Article 19
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
☐ the drawings:
 pages _____ as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
☐ the claims, Nos. _____
☐ the drawings, sheets/figs _____
☐ the sequence listing (*specify*): _____
☐ any table(s) related to the sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
☐ the claims, Nos. _____
☐ the drawings, sheets/figs _____
☐ the sequence listing (*specify*): _____
☐ any table(s) related to the sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 53-58

because:

☒ the said international application, or the said claims Nos. 53-58
relate to the following subject matter which does not require an international preliminary examination (*specify*):

See PCT Rule 67.1.(iv): Methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods.

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____
are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. _____ are so inadequately supported
by the description that no meaningful opinion could be formed (*specify*):

☐ no international search report has been established for said claims Nos. _____

☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13ter.1(a) or (b) and 13ter.2.

☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Preliminary Examining Authority in a form and manner acceptable to it.

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in the Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | | |
|-------------------------------|--------|--|-----|
| Novelty (N) | Claims | <u>2-3, 5-11, 16-22, 25-33, 37-43, 48-50</u> | YES |
| | Claims | <u>1, 4, 12-15, 23-24, 34-36, 44-47, 51-52</u> | NO |
| Inventive step (IS) | Claims | <u>2-3, 5-11, 16-22, 25-33, 37-43, 48-50</u> | YES |
| | Claims | <u>1, 4, 12-15, 23-24, 34-36, 44-47, 51-52</u> | NO |
| Industrial applicability (IA) | Claims | <u>1-52</u> | YES |
| | Claims | | NO |

2. Citations and explanations (Rule 70.7)

Cited documents of particular relevance:

D1: US 6248110 B1

D2: EP 1132061 A2

D1 shows a device for providing spongy bone with bone substitute, according to claim 1, with a perforating device (76, figure 5H) for making a hole in the spongy bone and with a flushing device (column 9, lines 4-7) for flushing the hole. A vacuum source (86) is provided for generating a vacuum in the hole for sucking and facilitation insertion of the bone substitute (96) into said spongy bone. D2 also shows a device according to claim 1 (see figures 2 and 6).

The device according to claim 1 therefore is known from D1 and D2. Consequently, the invention defined in claim 1 lacks novelty and inventive step.

The arrangements according to claims 4, 2-15, 23-24, 34-36, 44-47 and 51-52 are also previous known from D1 or D2. Consequently, claims 4, 12-15, 23-24, 34-36, 44-47 and 51-52 also lack novelty and inventive step.

The device and material according to claims 2-3, 5-11, 16-22, 25-33, 37-43 and 48-50 are, however, clearly distinguishable from known technique. Consequently, the invention according to claims 2-3, 5-11, 16-22, 25-33, 37-43 and 48-50 is considered novel and not obvious to a person skilled in the art.

The invention is considered to be industrially applicable.